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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------|-------------|----------------------|---------------------|------------------|
| 10/678,838 | 10/03/2003 | Kenneth F. Bailey | 4946-006 | 1148 |
| 24112 | 7590 | 06/07/2006 | EXAMINER | |
| COATS & BENNETT, PLLC | | | FOX, CHARLES A | |
| P O BOX 5 | | | ART UNIT | |
| RALEIGH, NC 27602 | | | PAPER NUMBER | |
| | | | 3652 | |

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/678,838 | Applicant(s) BAILEY, KENNETH F. | |
| | Examiner Charles A. Fox | Art Unit 3652 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 22 March 2006.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-39 is/are pending in the application.

4a) Of the above claim(s) 31-39 is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-30 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 03 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____

4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____

Election/Restrictions

Claims 31-39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on March 22, 2006. Regarding the applicants arguments that searching class 414 as well as the class the elected invention belongs to would not be a burden the examiner disagrees. Class 414 has at least 10,000 patent documents that are not related to the instant invention in any way, and searching the entire class is not even done for applications that are classified in 414. As such the restriction is hereby made final.

Specification

The disclosure is objected to because of the following informalities: the reference to parent application in the first paragraph should be updated to reflect the status of the parent applications. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,4,5,7,11,12,14,16,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Selhorst. Regarding claims 1,2 and 11 Selhorst US 2,239,448 teaches a device for distributing material comprising:

a drum (5) disposed to rotate about a generally horizontal axis;

said drum having a plurality of outwardly extending blades;

wherein said material when passed over said drum covers an arc of at least 90° when viewed from said the side of said device. There is no critical proof that the speed of the drum is important, as such the Selhorst reference is considered a functional equivalent structure. Regarding the packing density it is assumed that all horizontal axis rotary throwers will pack chips at the claimed density absent any other information.

Regarding claims 4,14 Selhorst also teaches that the arc is generally downward facing.

Regarding claim 5 Selhorst also teaches that the core of the drum has a non-circular cross section.

Regarding claims 7,16 Selhorst further teaches a feed chute upstream of said drum for feeding material to said drum.

Claims 6,9,15 and 18 rejected under 35 U.S.C. 103(a) as being unpatentable over Selhorst as applied to claims 1 and 11 above, and further in view of Kneer. Selhorst teaches the limitations of claims 1 and 11 as above, he does not teach driving the drum with a motor. Kneer US 4,820,108 teaches a device with a horizontal rotary thrower (3) that is driven by a motor and which is used to fill a container. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Selhorst with a motor in order to allow the device to operate independent from its movement across ground, thereby allowing the device to work while stationary.

Allowable Subject Matter

Claims 3,8,10,13,17,20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Regarding claims 3,10,13,20 the structure of the blades as claimed is not taught or suggested by the closest prior art of Selhorst.

Regarding claims 8,17 Selhorst does not teach or suggest a plurality of divider walls on the infeed chute.

The following is a statement of reasons for the indication of allowable subject matter: Claim 21 has structure dealing with the blades on a drum that is not taught or suggest by the closest prior art of Selhorst. Once a timely filed terminal disclaimer is filed claims 21-30 will be in condition for allowance.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3,5-9,11-13,15-18,21-24,26,28 and 29 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,4,5,7-10,12,26,27 and 31 of U.S. Patent No. 6,811,020. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference between the claims is the downward arc of material caused by shifting the location of the infeed chute. As this shifting of the chute is taught by the 6,811,020 patent it would have been obvious to one of ordinary skill in the art, at the time of invention to place the chute such that an arc as claimed could be produced.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached between 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Charles A. Fox 5-25-06
Charles A. Fox
Examiner
Art Unit 3652